

## REMARKS

Claims 1-18 are pending in the present application. Claims 3 and 6 have been withdrawn as being directed to non-elected subject matter. Claims 1, 2, 4 and 5 have been amended. Claims 7-18 have been newly added.

Applicants, by canceling or amending any claims, make no admission as to the validity of any rejection made by the Examiner against any such claims. Applicants reserve the right to reassert any of the claims canceled and/or the original claim scope of any claim amended, in a continuing application.

Claim 1 has been amended to recite that “a flowering plant having a released petal” is obtained by the method recited therein. Claim 2 has also been amended to recite that “the flowering plant has a released petal.” Claim 4 has been amended to recite that “a cut flower having a released petal” is obtained by the process recited therein. Likewise, claim 5 has been amended to recite that “the cut flower has a released petal.” Support for the amendment to claims 1, 2, 4 and 5 can be found throughout the specification and claims as originally filed.

Claims 7-18 have been added. New claims 7-18 recite additional method/process steps and depend, either directly or indirectly, from claim 1 or 4. Support for new claims 7-18 can be found throughout the specification and claims as originally filed.

No new matter has been added

In view of the following, further and favorable consideration is respectfully requested.

***I. At page 2 of the Official Action, claim 1 has been rejected under 35 USC § 102(e) as being anticipated by Horejsi et al. (US Patent No. 7,241,941).***

The Examiner asserts that Horejsi et al. describe a method of cultivating a flowering plant that includes removing sepals on a floral bud, as claimed.

In view of the following, this rejection is respectfully traversed.

The test for anticipation is whether each and every element as set forth is described, either expressly or inherently, in a single prior art reference. *Verdegaal Bros. v. Union Oil Co. of California*, 2 USPQ2d 1051, 1053 (Fed. Cir. 1987); MPEP § 2131. The identical invention must be shown in as complete detail as is contained in the claim. *Richardson v. Suzuki Motor Co.*, 9 USPQ2d 1913, 1920 (Fed. Cir. 1989); MPEP §2131. The elements must also be arranged as required by the claim. *In re Bond*, 15 USPQ2d 1566 (Fed. Cir. 1990).

Claim 1 is directed to a cultivation method of a flowering plant comprising a step of releasing restraint on a floral bud imposed by outermost layer of the floral bud at a stage between immediately after floral bud initiation and flowering period ***to obtain a flowering plant having a released petal.*** (Emphasis Added).

In complete contrast, Horejsi et al. is directed to soybean plants of variety 0137335, derivatives and plant parts thereof. Horejsi et al. also describe methods for using the soybean plants described therein. See Horejsi et al. at the abstract.

However, unlike the presently claimed subject matter, Horejsi et al. do not describe releasing restraint on a floral bud imposed by outermost layer of the floral bud at a stage between immediately after floral bud initiation and flowering period ***to obtain a flowering plant having a released petal***, as recited in claim 1. In this regard, Horejsi et al. describe

an artificial hybridization method, which is described as follows:

The calyx is removed by grasping a sepal with the forceps, pulling it down and around the flower, and repeating the procedure until the five sepals are removed. The exposed corolla is removed by grasping it just above the calyx scar, then lifting and wiggling the forceps simultaneously. See Horejsi et al. at column 13, lines 3-8.

According to the artificial hybridization method described by Horejsi et al., both the calyx and the petal (corolla) are removed. However, the soybean flower, in which both the calyx and the petal are removed, is not cultivated and bloomed. Therefore, Applicants submit that Horejsi et al. do not anticipate claim 1.

In further support of the patentability of the presently claimed subject matter, Applicants note that the soybean flower that is removed in Horejsi et al. is not provided to a flower market for sale at all. In addition, Applicants note that in contrast to the claims dependent from claim 1, Horejsi et al. do not describe a flower from any of the Caryophyllaceae, Rosaceae, Compositae and Theaceae families.

Therefore, Applicants submit that Horejsi et al. do not teach each and every element of claim 1, as required for anticipation under 35 USC § 102. Accordingly, reconsideration and withdrawal of this rejection is respectfully requested.

***II. At page 2 of the Official Action, claims 2 and 5 have been rejected under 35 USC § 102(b) as being anticipated by Klemm (PP 12,670).***

The Examiner asserts that claims 2 and 5 are anticipated by Klemm because Klemm allegedly describes a flowering carnation plant named Klecincre, as well as a cut flower.

In view of the following, this rejection is respectfully traversed.

The test for anticipation is whether each and every element as set forth is described, either expressly or inherently, in a single prior art reference. *Verdegaal Bros. v. Union Oil Co. of California*, 2 USPQ2d 1051, 1053 (Fed. Cir. 1987); MPEP § 2131. The identical invention must be shown in as complete detail as is contained in the claim. *Richardson v. Suzuki Motor Co.*, 9 USPQ2d 1913, 1920 (Fed. Cir. 1989); MPEP §2131. The elements must also be arranged as required by the claim. *In re Bond*, 15 USPQ2d 1566 (Fed. Cir. 1990).

Claim 2 depends directly from claim 1. Claim 2 is directed to a flowering plant obtained by the cultivation method according to claim 1, wherein ***the flowering plant has a released petal.***

Claim 5 depends directly from claim 4. Claim 4 is directed to a processing method of a cut flower comprising a step of releasing restraint on a floral bud imposed by outermost layer of the floral bud at a stage between immediately after floral bud initiation and flowering period ***to obtain a cut flower having a released petal.*** Claim 5 is directed to a cut flower obtained by the processing method according to claim 4, wherein ***the cut flower has a released petal.***

In contrast Klemm is directed to a new variety of carnation plant that originated as a sport of the variety *Mizderella*. See Klemm generally.

However, unlike the presently claimed subject matter Klemm does not describe a flowering plant having a released petal or a cut flower having a released petal, as recited in claims 2 and 5 respectively.

Therefore, Applicants submit that Klemm does not teach each and every element of claims 2 and 5, as required for anticipation under 35 USC § 102. Accordingly, reconsideration and withdrawal of this rejection is respectfully requested.

***III. At page 2 of the Official Action, claim 4 is rejected under 35 USC § 103(a) as being unpatentable over Horejsi et al. as applied to claim 1, and in further view of Klemm.***

The Examiner asserts that it would have been obvious to substitute a cut flower of Klemm in place of the flowering plant of Horejsi et al.

In view of the following, this rejection is respectfully traversed.

To establish a *prima facie* case of obviousness, the Examiner must satisfy three requirements. First, as the U.S. Supreme Court held in *KSR International Co. v. Teleflex Inc.*, 550 U.S. 398 (2007), “a court must ask whether the improvement is more than the predictable use of prior art elements according to their established functions. ...it [may] be necessary for a court to look to interrelated teachings of multiple patents; the effects of demands known to the design community or present in the marketplace; and the background knowledge possessed by a person having ordinary skill in the art, all in order to determine whether there was an apparent reason to combine the known elements in the fashion claimed by the patent at issue. ...it can be important to identify a reason that would have prompted a person of ordinary skill in the relevant field to combine the elements in the way the claimed new invention does... because inventions in most, if not all, instances rely upon building blocks long since uncovered, and claimed discoveries almost of necessity will be combinations of what, in some sense, is already known.” (*KSR*, 550 U.S. 398 at 417.) Second, the proposed modification of the prior art must have had a

reasonable expectation of success, determined from the vantage point of the skilled artisan at the time the invention was made. *Amgen Inc. v. Chugai Pharm. Co.*, 18 USPQ2d 1016, 1023 (Fed. Cir. 1991). Lastly, the prior art references must teach or suggest all the limitations of the claims. *In re Wilson*, 165 USPQ 494, 496 (C.C.P.A. 1970).

Applicants respectfully submit that a prima facie case of obviousness has not been established because, whether taken alone or in combination, none of the cited references teach or suggest every element of claim 4.

Claim 4 is directed to a processing method of a cut flower comprising a step of releasing restraint on a floral bud imposed by outermost layer of the floral bud at a stage between immediately after floral bud initiation and flowering period ***to obtain a cut flower having a released petal.***

As discussed, Horejsi et al. is directed to soybean plants of variety 0137335, derivatives and plant parts thereof. Horejsi et al. also describe methods for using the soybean plants described therein. See Horejsi et al. at the abstract. In addition, Klemm is directed to a new variety of carnation plant that originated as a sport of the variety *Mizderella*. See Klemm generally.

However, unlike the presently claimed subject matter, neither Horejsi et al. nor Klemm teach or suggest the presently claimed processing method of a cut flower in which a cut flower having a released petal is obtained. Therefore, Applicants submit that, whether taken alone or in combination, neither Horejsi et al. nor Klemm teach or suggest every element recited in present claim 4.

In view of the remarks set forth herein, it is submitted that, whether taken alone or in combination none of the cited references render the presently claimed subject matter obvious within the meaning of 35 USC § 103 (a). Accordingly, the Examiner is respectfully requested to withdraw this rejection.

***IV. New Claims 7-18.***

Applicants respectfully submit that new claims 7- 18 are novel and non-obvious for at least the reason that they all depend, either directly or indirectly from independent claims 1 and 4, which is also novel and non-obvious for the reasons set forth herein above. Accordingly, Applicants respectfully request an indication that all of the pending claims are now allowable.

**CONCLUSION**

In view of the foregoing, Applicant submits that the application is in condition for immediate allowance. Early notice to that effect is earnestly solicited. The Examiner is invited to contact the undersigned attorney if it is believed that such contact will expedite the prosecution of the application.

In the event this paper is not timely filed, Applicants petition for an appropriate extension of time. Please charge any fee deficiency or credit any overpayment to Deposit Account No. 14-0112.

Respectfully submitted,

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